

BEFORE THE 'STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
WILLIAM A. SALANT AND DOROTHY SALANT)

Appearances:

For Appellants: James F. Milne
 Attorney at Law

For Respondent: Lawrence C. Counts
 Associate Tax Counsel

O P I N I O N

This appeal is made pursuant to section 18594 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protests of William A. Salant and Dorothy Salant against proposed assessments of additional personal income tax in the amounts of \$619.05, \$1,168.75, and \$1,472.75 for the years 1962, 1963, and 1964, respectively.

The question to be decided for each year under appeal is the same, namely: whether the amount of tax credit deducted by appellants on account of taxes paid to the State of New York is in excess of the amount of credit allowable under California law. Resolution of this question requires consideration of the scope and effect of sections 18001 and 18006 of the Revenue and Taxation Code; Section 18001 provides:

Subject to the following conditions, residents shall be allowed a credit against the taxes imposed by this part for net income taxes imposed by and paid to another state on income taxable under this part:

(a) The credit shall be allowed only for taxes paid to the other state on income derived from sources within that state which is taxable under its laws irrespective of the residence or domicile of the recipient.

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(b) The credit shall not be allowed if the other state allows residents of this State a credit against the taxes imposed by that state for taxes paid or payable under this part.

(c) The credit shall not exceed such proportion of the tax payable under this part as the income subject to tax in the other state and also taxable under this part bears to the taxpayer's entire income upon which the tax is imposed by this part.

Section 18006 provides:

(a) A member of a partnership who is taxable on the income thereof shall, subject to the conditions prescribed in (b) and (c), be allowed a credit against the taxes imposed by this part on such income for net income taxes paid by the partnership to another state on such income.

(b) Credit shall be allowed only for such proportion of the tax paid to such other state by the partnership as the income of the partnership which is taxable to the partner under this law and also taxed to the partnership in such other state bears to the entire income of the partnership upon which the taxes paid to such other state were imposed.

(c) The credit shall not exceed such proportion of the tax payable under this law as the income of the partnership which is taxable to the partner under this law and also taxed to the partnership in such other state bears to the partner's entire income upon which the tax is imposed by this law.

Appellants are husband and wife who have maintained their residence in the State of California since October 1961. They filed joint California personal income tax returns for the years 1962, 1963, and 1964.

For each of these years appellants realized income from sources in New York which include a distributive share of income from a New York partnership., The income derived from New York sources was subject to New York personal income tax and personal income tax of \$3,220, \$1,820, and \$2,400 was paid to the State of New York for the years 1962, 1963, and 1964,

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respectively. Additionally, the partnership from which appellants derived income was subject to a separate net income tax imposed by the New York Unincorporated Business Tax Law. The taxes paid by the partnership on appellants' share of the partnership income amounted to \$788.03, \$1,168.75, and \$1,472.75 for these same years.

As residents of California, appellants were subject to California's personal income tax on their share of the partnership income. Appellants, however, computed credits of \$1,013.77, \$1,808.17, and \$2,268.02 against their California personal income tax on account of the personal income taxes paid to New York and separate credits of \$760.47, \$1468.75, and \$1,472.75 on account of the taxes paid by the New York partnership on their share of partnership income. The combined amounts of \$1,774.24 for the year 1962, \$2,976.92 for the year 1963, and \$3,740.77 for the year 1964 were deducted from their California personal income taxes payable for these years. The total credit claimed for each year was substantially in excess of the California tax imposed on the portion of the income realized by appellants from New York sources.

Respondent concluded that the California Personal Income Tax Law did not authorize a tax credit in excess of the amount of California tax imposed on the income also subject to tax in a sister state. It disallowed that portion of the tax credit which exceeded the California tax on the income derived from New York sources.

It is appellants' position that sections 18001 and 18006 are each self-contained provisions providing for the allowance of separate and distinct tax credits and that the total amount of the claimed tax credits should be allowed so as to prevent double taxation.

The intent of the Legislature is the controlling consideration in determining the extent of the relief afforded by these code sections, (Dickey v. Raisin Proration Zone 1, 24 Cal. 2d 796 [151 P.2d 505].) It is proper to determine what the Legislature intended from all the circumstances including the consequences that might flow from a particular interpretation. (Estate of Ryan, 21 Cal. 2d 498 [133 P.2d 626].) Since both sections embrace the same subject and are part of the same law, they are to be construed in light of each other so that the interpretation will be in harmony. (Select Base Materials v. State Board of Equalization, 51 Cal. 2d 640 [335 P.2d 672].) The interpretation should be reasonable and compatible with the apparent policy and purpose of the legislation. (Rethleban Pacific Coast Steel Corp. v. Franchise Tax Board, 203 Cal. App. 2d 458 [21 Cal. Rptr. 707].) - - -

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The critical provisions of the two sections are those to the effect that the credit "shall not exceed" such proportion of the California tax as the income taxed by both states bears to the entire income taxed by California. Appellants construe these provisions as a mandate that the credit for each of the taxes imposed by New York shall equal **the** specified proportion of the California tax regardless of whether the combined credits exceed that proportion. As we view those provisions, they reflect an underlying intent that the total credit should be limited to the amount of the California tax on **the same** income that is taxed by the other state regardless of whether the imposition by the other state is in the form of one tax or of two separate taxes. This construction meets the literal requirements of each section that the credit "shall not exceed" the **specified** proportion and it harmonizes with the evident purpose of the legislation,

We agree with appellants that the purpose of the two sections is to prevent double taxation but their concept of the appropriate relief goes far beyond that reasonably attributable to the Legislature in enacting the sections. These sections are concerned with the double taxation that results when California and another state tax the same income. All that is required for California to give relief from its part in that double taxation is to allow a credit against the California tax on the income that is taxed by both states. Appellants' **interpretation would relieve a taxpayer from the payment of** California tax on income which had no connection whatsoever with the other state and which was not taxed by that state at all.

In addition, appellants' interpretation could result in discrimination against a taxpayer whose share of partnership income is subject to a single income tax of another state as it is in California rather than two separate net income taxes such as imposed by the State of New York. Assume, for example, that a single tax levied by **state X** equals the total imposed through two separate taxes by state Y on the same amount of partnership income. The California credit for the tax paid to state **X** would clearly be limited to the amount of the California tax on the **same** income, pursuant to section 18001, subdivision (c). Equivalent relief against the total of the two taxes paid to state Y would be assured through the combined operation of sections 18001 and 18006. Under appellants' interpretation of each section as being entirely independent, however, the relief for the taxes imposed by state Y would be greater. We fail to see why the Legislature would wish to provide a greater measure of relief merely because the total tax is cast in the form of two separate taxes,

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To give effect to the intent of the Legislature, it is our opinion that sections 18001 and 18006 must be construed together so that the total credit for taxes imposed by another state on income also taxed by California will not exceed the California tax on that income. Since **respondent's** action accords with this view, we sustain its partial disallowance of the claimed credits.

Our decision makes it unnecessary to rule on **respondent's** alternate contention that the allowance of a greater credit would violate the provisions of section 18011 of the Revenue and Taxation Code.

O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protests of William A. **Salant** and Dorothy **Salant** to proposed assessments of personal income tax in the amounts of \$619.05, \$1,168.75, and \$1,472.75 for the years 1962, 1963, and 1964, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 10th day of May, 1967, by the State Board of Equalization.

Chairman

John W. Lynch

Member

Scott Keeley

Member

Richard Lee

Member

Member

ATTEST:

[Signature]

Secretary